



CITY OF CARSON

PLANNING COMMISSION STAFF REPORT

PUBLIC HEARING: October 10, 2017

SUBJECT: Zoning Text Amendment No. 28-17

APPLICANT: City of Carson
701 E. Carson Street
Carson, CA 90745

REQUEST: To Amend and Update Provisions of the Zoning Ordinance Regarding Appeals of Certain Permits, Use Permits or Conditional Use Permits

PROPERTIES INVOLVED: Citywide

COMMISSION ACTION

<u>AYE</u>	<u>NO</u>		<u>AYE</u>	<u>NO</u>	
		Chairman Diaz			Thomas
		Vice-Chair Pimentel			Mitoma
		Andrews			Post
		Fe'esago, Jr.			
		Guidry			

I. Introduction

Applicant:

City of Carson, 701 E Carson St, Carson, CA 90745

Project Address:

Citywide

II. Project Description

Periodically, the City Attorney's office reviews relevant appellate case decisions and, in light of the same, makes recommendations to up-date various provisions of the municipal code. A court of appeals decision out of the Fourth Appellate District, in Santa Ana, *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, has prompted the City Attorney's office to make certain amendments the appeals sections of the municipal code relating to permits, use permits, or conditional use permits.

III. Background

In *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, the Newport Beach Planning Commission approved a CUP authorizing a restaurant to extend weekend operating hours and to allow dancing inside the restaurant. Although the City's municipal code permitted appeals by "interested parties" who followed certain specified procedural rules, a City Councilmember informed the City Clerk he wanted to appeal that decision and argued forcefully against the project when it came before the full City Council (including making the motion to overrule the Planning Commission and deny the CUP). Ultimately, the full City Council reversed the decision granting the CUP and denied the extended hours. (Id. at 1019.)

In its resolution of denial, the City Council asserted the Councilmember's appeal was proper based on the "long-standing, unwritten policy permitting councilmembers to initiate appeals without complying with any of the procedures required of other appellants." The Court of Appeal reversed the trial court's denial of the petition on the ground the City's municipal code contained no provision allowing city councilmembers to appeal actions of a planning commission or otherwise exempting them from the procedural prerequisites for an appeal. (Id. at 1020-23.)

The Woody's court also found the appealing Councilmember's actions and advocacy had created "an unacceptable probability of actual bias" (id. at 1022) that was "amplified" when combined with "the related phenomenon of a city violating its own procedure by initiating an appeal to itself." (Id. at 1023.)

Carson Municipal Code ("CMC") § 9172.21 sets forth the appellate procedures for reviewing decisions of the Planning Commission and refers potential appellants to CMC § 9173.4. Unlike in Woody's, the CMC specifically provides that an appeal can be brought by a member of the City Council. However, this section of the code could be strengthened by making clear that the statement of grounds of appeal by a member of the City Council or the City Manager need not specify grounds for appeal, but, rather, need only request review by the Planning Commission or the City Council as

the case may be. The proposed ordinance would codify this exception to the general rule.

CMC § 9173.9 describes fees for filing an appeal. Resolution 17-001, the Master Fees Resolution, requires “\$500 or half of the original filing fee not to exceed \$2,500, whichever is greater” for appeals from the decision of the Planning Commission. The City has a long standing custom and practice not to require Councilmembers to pay this fee but the same is not codified in the CMC. The proposed ordinance would codify this custom and practice.

Finally, our review of sister city zoning ordinances discloses that, in Carson, a denied permit, use permit, or conditional use permit can simply be reapplied for following denial or revocation of the same. This means that, having gone through the some-time lengthy and costly process of denying or revoking a permit, use permit, or conditional use permit, an unhappy applicant can simply re-file its application.

To remedy this potential for abuse of the City’s application procedures, the proposed ordinance would provide that “following the denial of any permit application by the Director, the Planning Commission, or the City Council . . . or upon the revocation of any permit, use permit, or conditional use permit by the Director, the Planning Commission, or the City Council . . . no application for a permit, use permit, or conditional use permit for the same or substantially the same use or conditional use on the same or substantially the same real property shall be filed within one (1) year from the date denial or revocation of the permit, use permit, or conditional use permit”

IV. Environmental Review

Pursuant to Section 15060(c)(2), the proposed Zoning Ordinance amendment is not subject to the California Environmental Quality Act (CEQA) since the activity will not result in direct or reasonable foreseeable indirect physical change in the environment.

V. Public Notice

Public Notice of this proposed Zoning Ordinance amendment was advertised in the September 28, 2017 edition of Our Weekly.

VI. Recommendation

That the Planning Commission:

- **RECOMMEND APPROVAL** of the ZTA 28-17 to the City Council; and
- **WAIVE further reading and ADOPT** Resolution No. 17____, “RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARSON RECOMMENDING THE CITY COUNCIL TO ADOPT TEXT AMENDMENT NO. 28-17, AMENDING ARTICLE IX, CHAPTER 1, OF THE CARSON MUNICIPAL CODE RELATING TO APPEALS.”

VII. Exhibits

1. Draft Resolution

Prepared by: Richard Rojas, Senior Planner

CITY OF CARSON
PLANNING COMMISSION

RESOLUTION NO. 17-

A RESOLUTION OF THE PLANNING COMMISSION OF THE CITY OF CARSON RECOMMENDING THE CITY COUNCIL TO ADOPT TEXT AMENDMENT NO. 28-17, AMENDING ARTICLE IX, CHAPTER 1, OF THE CARSON MUNICIPAL CODE RELATING TO APPEALS

WHEREAS, on October 10, 2017, the Planning Commission held a public hearing to discuss an ordinance amendment to the CMC relating to appeals, at which conclusion, the Planning Commission recommended to the City Council approval of this Zoning Ordinance Text Amendment; and

NOW, THEREFORE, the PLANNING COMMISSION OF THE CITY OF CARSON, CALIFORNIA, HEREBY FINDS, RESOLVES AND ORDERS AS FOLLOWS:

Section 1. Text Amendment 28-17 was assessed in accordance with the authority and criteria contained in the California Environmental Quality Act (CEQA), the State CEQA Guidelines (the Guidelines), and the environmental regulations of the City. The Planning Commission hereby recommends finding and determination by the City Council that the adoption of Text Amendment No. 26-16 is exempt from CEQA pursuant to Section 15060(c)(2) of the Guidelines since the activity will not result in direct or reasonable foreseeable indirect physical change in the environment.

Section 2. The Planning Commission of the City of Carson has reviewed Text Amendment No. 28-17 and hereby finds it is consistent with the General Plan and all applicable Specific Plans.

Section 3. The Planning Commission of the City of Carson, based on its own independent judgment, finds that Text Amendment No. 28-17 promotes and protects the health, safety, welfare, and quality of life of City residents, including protection against nuisances.

Section 4. The Planning Commission hereby recommends approval to the City Council of an Ordinance of to adopt Text Amendment No. 28-16 by amending sections related to appeals, Attachment 1.

Section 5. The Secretary shall certify to the adoption of the Resolution and shall transmit copies of the same to the City Council of the City of Carson.

PASSED, APPROVED and ADOPTED THIS 10TH DAY OF OCTOBER, 2017.

CHAIRMAN

ATTEST:

SECRETARY

EXHIBIT NO. 1-



ATTACHMENT 1

ORDINANCE NO. 17-____

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CARSON, CALIFORNIA, AMENDING ARTICLE IX, CHAPTER 1, OF THE CARSON MUNICIPAL CODE RELATING TO APPEALS.

NOW, THEREFORE, the CITY COUNCIL of the CITY OF CARSON, CALIFORNIA, DOES HEREBY ORDAIN AS FOLLOWS:

SECTION 1. Subdivision (B)(1) of Section 9173.4, Appeals, of Article IX, Chapter 1, of the Carson Municipal Code is hereby amended to read in its entirety as follows (new text, if any, is identified in *bold & italics*, deleted text, if any, is identified in ~~strike through~~):

“1. An appeal may be filed by any person, including any member of the City Council or the City ~~Administrator~~*Manager*. *In the event of an appeal by any member of the City Council or the City Manager, Section 9173.9 shall not apply and there shall be no fee required any member of the City Council or the City Manager to perfect an appeal.*”

SECTION 2. Subdivision (B)(3) of Section 9173.4, Appeals, of Article IX, Chapter 1, of the Carson Municipal Code is hereby amended to read in its entirety as follows (new text, if any, is identified in *bold & italics*, deleted text, if any, is identified in ~~strike through~~):

“d. A statement of the grounds for appeal or how there is error in the decision of the matter being appealed; *provided, however, that in the event of an appeal by any member of the City Council or the City Manager, sub-sections (a), (b), and (c) shall not apply and the statement of grounds need only provide, in substance and effect, a request that a specific decision, administrative case number, or resolution number, as the case may be, be reviewed by the Planning Commission or City Council, as the case may be. No other grounds for appeal need be stated to perfect such appeal and such statement need only be filed with the City Clerk.*”

SECTION 3. A new subdivision (E) of Section 9173.4, Appeals, is hereby added to Article IX, Chapter 1, of the Carson Municipal Code to read in its entirety as follows (new text is identified in *bold & italics*):

“*E. Following the denial of any permit application by the Director, the Planning Commission, or the City Council, as the case may be, or upon the revocation of any permit, use permit, or conditional use permit by the Director, the Planning Commission, or the City Council, as the case may be, no application for a permit, use permit, or conditional use permit for the same or substantially the*”



same use or conditional use on the same or substantially the same real property shall be filed within one (1) year from the date denial or revocation of the permit, use permit, or conditional use permit became final within the meaning of this Chapter.”

SECTION 4. If any section, subsection, sentence, clause, phrase, or portion of this Ordinance, or the application thereof to any person or circumstances, is, for any reason, held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect any other provision or application, and to this end the provisions of this ordinance are declared to be severable. The City Council hereby declares that it would have adopted this ordinance and each section, subsection, sentence, clause, phrase, part or portion thereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses, phrases, parts or portions thereof be declared invalid or unconstitutional.

SECTION 5. This Ordinance shall be in full force and effect thirty (30) days after its second reading and adoption.

SECTION 6. The City Clerk shall certify to the adoption of this Ordinance, and shall cause the same to be posted and codified in the manner required by law.

PASSED, APPROVED and ADOPTED at a regular meeting of the City Council on this _____ day of October, 2017.

MAYOR ALBERT ROBLES

ATTEST:

CITY CLERK DONESIA GAUSE

APPROVED AS TO FORM:

CITY ATTORNEY SUNNY K. SOLTANI

